case might have been of opinion that the defendant had taken great care in the selection of the person who erected the scaffolding, and yet that he was incompetent for the work. I think, therefore, that the rule for a new trial ought to be absolute.

CRESSWELL, J., and WILLIAMS, J., concurred.

Rule discharged.

ABSTRACTS OF RECENT AMERICAN DECISIONS.

[FROM 2 E. D. SMITH'S REPORTS.]

ACTION.

Negligence—Left hand track of Road.—In an action brought in the marine court by the owner of a horse and cart, for injuries caused by a collision with one of the cars of a railroad company, the justice charged the jury, "that if the plaintiff was, in their opinion, doing his best to get out of the defendant's way it was all that could be required of him; that if he was so doing, the defendants were bound at their peril, to stop their cars to avoid collision; and if they had not sufficient power to do so, or if they omitted to stop their cars, they were responsible for the consequences." *Held*, that the charge being in effect, that if neither party was in fault, the plaintiff was entitled to recover, was palpably erroneous and unjust. *Altrueter* vs. *The Hudson River Railroad Co.*, p. 151.

Held, also, that the question, whether the defendants were guilty of negligence, was as material as whether the plaintiff was; and should have been made the primary question, instead of reversing the order, and telling the jury that if the plaintiff was not guilty of negligence, they must assume that the defendants were. *Ib.*

The mere fact that a car of a railroad company in the city of New York is proceeding on the left-hand track, will not of itself, charge the company with fault, and subject them to damages resulting from an accident. *Id.*

Passenger's baggage—Liability on continuous roads.—A passenger procured a ticket for Montreal, at the office of the New Haven Railroad Company, in New York; instead of giving his valise into the charge of the agents of the company and receiving their check therefor, he proceeded with his valise in his own charge to New Haven, the terminus of the company's

road, where he delivered the valise to the agent of a connecting railroad company, who checked it through to another point on the route. It appeared that a joint committee appointed by the various lines between New York and Montreal regulated the time of running their several trains, each company, however, paying its own expenses without reference to the others. The ticket was a strip of paper, divided into coupons, whereof one was to be detached and surrendered to the conductor of each line on the route. Through tickets for the entire distance, or for intermediate places, were sold in New York by one general agent appointed by each company, separately. The proceeds of sales of through tickets were distributed to the several companies each month according to the respective amounts of their established rates of fare. *Held*, that the New York and New Haven Company, whose road terminated in those cities, was not liable in an action for the loss of the valise. *Stratton* vs. *The New York and New Haven Railroad Co. p.* 184.

Held further, that the several companies on the route from New York to Montreal, were not jointly liable as copartners, for the negligence of the special agents of one of them. *Ib.*

Duty of owner of lot in excavating—Tenant.—Where, in blasting rocks on his own lots, an owner threw stones upon an adjoining lot, occupied by a person as tenant, and so extended his blast as to forcibly split out the rock in the lot of such person, undermining the foundations of his house, and rendering it insecure; *held*, that he was liable in damages to the tenant of such adjoining lot. *Gourdier* vs. *Cormack*, p. 200.

The liability attaches whether the injuries are committed negligently or in the use of all reasonable care. *Ib.*

The tenant in such case, recovers for the injury to his possession, not for an injury to the freehold, and he is entitled to whatever damages he sustained by the interference with his possessions. *Ib.*

It seems that an owner may not be liable for the consequences of mere excavation on his own lot, prudently conducted, although the earth and walls of adjacent premises slide in for the want of protection. *Ib.*

Where the owners of a lot gave written notice, in their own name, of their intention to blast rock on such lot; *held*, in an action against them for injuries caused by the blasting, that the notice was prima facie evidence that they were themselves the actors in the work, and was sufficient to

render them liable for damages caused by their agents in executing the same, unless the contract between the agents and owners was proved to be such as would relieve the latter from resonsibility. *Ib.*[1]

Caveat emptor—Warranty of provisions—Contract.—Where, on a purchase of provisions, as merchandise, to be sold again by the buyer, they are in a situation to be, and are examined as fully as the buyer deems necessary, and there is no frand nor express warranty, nor representations amounting to warranty, the maxim *caveat emptor* applies, and although on a subsequent further examination, a portion proves to be unsound and worthless, the buyer is liable for the contract price. *Hyland* vs. *Sherman*, p. 234.

Where a party agrees to purchase an article specified to be of a certain quality, he is not bound to accept and pay for a different article; and after delivery he has a reasonable time to examine and ascertain whether his contract is in fact fulfilled. But if he examines the article when tendered, retains it and pays the price, the sale is consummated, and the purchaser cannot then without having offered after a further examination, to return it, or given notice to the seller to resume possession, maintain an action to recover damages for the inferiority of the article delivered, to that called for by the contract. *Ely* vs. *O'Leary*, p. 355.

Where goods are delivered under an executory contract of sale, the purchaser is bound to accept them as a performance of the contract, or upon discovering their inferiority, reject them and give notice of such rejection, or his acquiescence in the quality will be presumed. *Otherwise*, it seems, where the action is not on the contract but is in the nature of an action on the case for fraud or deceit. Hence, where a party bound by an executory contract resorts to artifice, false packing, or other means to disguise the quality, and deceive the other party to the contract, he is liable for all the damages occasioned by his deceit or fraud. *Ib.*

But *it seems*, that where there is an express warranty or representation amounting to a warranty, different rules apply. *Ib.*

Agreement.

Release—Alteration.—An alteration in the date of a general release, which purports to discharge the relessee from all claims and demands "to the day of the date," is a material alteration; and when made by the relessee after the execution by the relessor, and without his authority and assent, it would avoid the release. *Maybee vs. Sniffen*, p. 1.

[1] See Grant *v.* McGuire, 1 Dutcher N. J. Rep. 356.—*Eds. Am. Law Reg.*

The authorities are divided upon the question whether, when a material alteration appears upon the face of the instrument, it is to be presumed, in the absence of explanation, to have been made before or after the execution and delivery. *Ib.*

It seems, upon a review of adjudged cases, that the best rule and the one most in accordance with the judicial decisions, is that the instrument, with all the circumstances of its history, its nature—the appearance of the alteration, the possible motives to or against making it—and its effect upon the parties respectively, ought to be submitted to the jury; and the court cannot presume that the alteration was made after the signing, from the mere fact that it appears on the face of the instrument, whether under seal or otherwise. *Ib.*

In bar of a recovery on a money demand, a release was produced, which appeared on inspection to have had its date altered by the obliteration of the word "March," and the substitution of "May." There was some evidence that other relessors had executed the instrument before the plaintiff, and that they signed it after the day of the date as altered. It was not alleged that any claims had accrued to the plaintiff from the defendant, between the two dates, to constitute a motive for the change; *held* that there was no error in the decision of referees admitting the release in evidence. *Ib.*

Under such a state of facts, the question whether the instrument had been vitiated by a fraudulent alteration, is a question of fact for a jury or referees. *Ib.*

The fact that an instrument was actually executed at the time indicated by the date substituted for the original date, explains the alteration, and renders the instrument admissible in evidence. *Ib.*

Carriers.

Common Carriers—Liability—Notice.—The liability of a common carrier who receives and ships goods at New York, directed to a firm at a certain number and street in Philadelphia, continues after the arrival of the vessel at the wharf in that city, until notice is given to the consignee and reasonable time allowed him for their removal. *Barclay vs. Clyde,* p. 95.

But where the direction is to another and more distant point than that at which his own route terminates, the carrier's responsibility is at an end when he delivers all the goods, in the usual course of business, to the other carriers, to be forwarded by them. *Ib.*

Where certain furniture, belonging to the plaintiff, was boxed, and was transported by the defendants in their vessel, from New York to Philadelphia, and on its arrival was taken, with a bill of charges, by a carman in their employ, to the particular place designated, and there delivered to the persons to whom it was addressed, who paid the freight and cartage, *held* that it was competent in an action to recover damages for injuries to the articles, to prove their condition when received from the carman. *Ib.*

DAMAGES.

New Trial—Inadequate Damages.—The court may grant a new trial as well where the damages are inadequate as where they are excessive, if the case be such as clearly to indicate that the jury have acted under the influence of partiality, bias, or perverted judgment. *Richards vs. Sanford*, p. 349.

Accordingly, where a recovery was had in an action for the defendant's negligence, whereby the plaintiff was injured and sustained severe bruises upon his mouth and face, and one of his teeth was knocked out; it was *held* that the verdict of the jury for $10 only, was grossly inadequate, and that the plaintiff was entitled to a new trial on payment of costs, unless the defendant should consent to a material increase in the amount of damages found. *Ib.*

Damages for Servant's negligence.—Where a person, without fault on his part, suffered damages from a horse running away; *held* that the owner thereof was liable, it appearing that his servant was negligent in not properly securing and restraining the horse, although the consequences of the accident were also chargeable upon a third person, who caused him to run by carelessly frightening him. *McCahill vs. Kipp*, p. 413.

EVIDENCE.

Waiver of proof—Insurance.—In an action upon a policy of insurance upon the life of B., whereby the defendants agreed to pay to A. (the plaintiff), $100 within sixty days after notice and proof of the death of B.; *held* that the defendants having, upon receiving the preliminary proofs, placed their refusal to pay on the ground that there was no sufficient proof of the particulars of the plaintiff's interest, and having suffered the sixty days to elapse without any objection to the sufficiency of proof of death, had waived further proof of death, or admitted the sufficiency of that already furnished, and that after the sixty days it was too late to raise that objection. *Miller vs. The Eagle Life Ins. Co.*, p. 268.

No prelimanary proof of interest is necessary before suit brought upon such a policy; there being no condition therein that such preliminary proof shall be furnished. *Ib.*

Mode of selling Stereotype plates—Sheriff's Sale.—Where a part of property sold under execution, consisted of stereotype plates which, although accessible, were not in accordance with the directory provisions of the statute, in actual view at the time of the sale; it was *held* that although a sheriff cannot sell by sample, yet, that for the purpose of furnishing criteria, whether the sale was so conducted as to bring the best price, it was competent to show that the plates would suffer injury by handling, that impressions therefrom were displayed, and that such was the usual mode of disposing at trade sales articles of the kind. *Bruce vs. Westervelt*, p. 440.

Upon a Sheriff's sale, under execution, of articles constituting the establishment of a publishing house, certain stereotype plates, being part of the property sold, were in a vault connected with the building, but apart from the rooms wherein the sale took place; *held* that the sale would have been void if the vault was locked or the plates were in such condition that they could not be reached and examined by the persons in attendance; but that the sale was valid if at the time thereof an opportunity was given to the purchasers to go and examine the plates, although the same were not immediately in view. *Ib.*

Look-out on Boat—Negligence.—Although due vigilance requires that a steamboat should at night have a competent person on the boat as a look-out, the absence thereof is not of itself sufficient evidence of negligence on the part of her owners to prevent a recovery against another vessel for a collision, where it appears from the lightness of the night and other circumstances, that the omission did not contribute to the accident. *Meller vs. Smith*, p. 462.

To warrant a recovery by the owners of a steamer for a collision with a schooner, they must show by a preponderance of evidence that the accident was occasioned by fault of the schooner, and it must not appear that any fault of the steamer conduced thereto. *Ib.*